

portion of the screw to be screwed into the threaded portion of the implant, and wherein the
holder is separable from the spacer and the screw to expose the screw for possible further
C6
Coral tightening.

Remarks

Claims 25-53 and 55-62 are now pending in this application. Applicant has amended claims 25, 34, 53, 56, and 59, added claim 62 and canceled claim 54 to clarify the present invention. Applicant respectfully requests favorable reconsideration of this application.

Applicant has amended claim 56 to address the rejection under 35 U.S.C. § 112, second paragraph. Since the language identified by the Examiner is no longer present in claim 56, Applicants submits that claim 56 complies with 35 U.S.C. § 112, second paragraph and respectfully requests withdrawal of this rejection.

The Examiner rejected claims 34-49, 53-55, and 57-59 under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 5,622,500 to Niznick. The Examiner rejected claims 25-33, 50-52, 56, and 59-61 under 35 U.S.C. § 103(a) as unpatentable over Niznick.

Niznick does not disclose the present invention since, among other things, Niznick does not disclose a device that includes a recess that includes a spacer engaging portion and a screw engaging portion. By having separate spacer and screw engaging portions, the end recess according to the present invention provides a simple design that makes the present invention

easier to manipulate and hold the small spacer and screw. On the other hand, Niznick discloses a stopper that has two different openings to fit on the collar and on the screw, the annulus 405 and the central opening in the protruding part 404. Another advantage of the present invention is that it provides a structure that is easier to manufacture since it only includes one central bore cavity with two different portions.

Additionally, Niznick does not disclose a device that includes a grip portion to facilitate handling of the holder. Niznick discloses a "stopper" having a much different configuration than the holder of the present invention, particularly the portions that receive the healing collar and healing screw.

In view of the above, Niznick does not disclose all elements of the present invention as recited in claims 34-49, 53-55, and 57-59. Since Niznick does not disclose all elements of the present invention as recited in claims 34-49, 53-55, and 57-59, the present invention, as recited in newly presented claims 34-49, 53-55, and 57-59, is not properly rejected under 35 U.S.C. § 102(b). For an anticipation rejection under 35 U.S.C. § 102(b) no difference may exist between the claimed invention and the reference disclosure. *See Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q. 841 (C.A.F.C. 1984).

Along these lines, anticipation requires the disclosure, in a cited reference, of each and every recitation, as set forth in the claims. *See Hodosh v. Block Drug Co.*, 229 U.S.P.Q. 182 (Fed. Cir. 1986); *Titanium Metals Corp. v. Banner*, 227 U.S.P.Q. 773 (Fed. Cir. 1985); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986); and *Akzo N.V. v. U.S. International*

Trade Commissioner, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986).

Niznick also does not suggest the present invention since, among other things, Niznick does not suggest a device that includes a recess that includes a spacer engaging portion and a screw engaging portion. As described above, the present invention provides a simpler structure that makes it easier to manipulate and hold the small spacer and screw and is easier to manufacture. Niznick suggests a stopper that has two different openings and does not include one recess that has a screw engaging portion and a spacer engaging portion.

Additionally, the holder according to the present invention can include a widened bottom part 1b that can fit on the outside of the spacer part. On the other hand, Niznick suggests a stopper 401 that includes a projection 404 that fits inside the internal walls of healing collar 402.

Furthermore, the holder according to the present invention can include an end surface 1d that bears on a corresponding outer flange surface 2d of the spacer part. This flange surface is not the top surface of the spacer part. Rather, the flange surface is well below the top surface of the spacer part. On the other hand, Niznick suggests a stopper that includes an annulus 405 that rests on the top surface of the healing collar. Such an annulus is more critical to dimension than a cylindrical recess as compared to the structure of the present invention. Also, to have the force of action from the stopper on the uppermost part of the collar is more critical as it could give rise to bending forces or the like.

In view of the above, Niznick does not disclose or suggest patentable features of the

present invention. Therefore, Niznick does not anticipate the present invention or make the present invention obvious. Accordingly, Applicant respectfully requests withdrawal of the rejection based upon the cited reference.

In conclusion, Applicant respectfully requests favorable reconsideration of this case and early issuance of the Notice of Allowance.

If an interview would facilitate the prosecution of this case, Applicant urges the Examiner to contact the undersigned at the telephone number listed below.

The undersigned authorizes the Commissioner to charge insufficient fees and credit overpayment associated with this communication to Deposit Account No. 19-5127, 19390.0003.

Respectfully submitted,

Date: 3-14-03


Eric J. Franklin, Reg. No. 37,134
Attorney for Applicant
Swidler Berlin Shreff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Telephone: 202-424-7500